

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRL. MISC. No.M-39911 OF 2016
DATE OF DECISION : 14th FEBRUARY, 2017**

Mool Chand Bairwa

.... Petitioner

Versus

Central Bureau of Investigation, ACB (Haryana)

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. J. S. Mehndiratta, Advocate for the petitioner.

Mr. Sumeet Goel, Advocate, Retainer Counsel for the CBI.

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A. B. CHAUDHARI, J. (ORAL)

Heard learned counsel for the rival parties.

The impugned order is the one rejecting the prayer made by the petitioner-accused for recall of the witnesses PW-10 Chhotu Ram for further cross-examination and DW-1 Jabhar Mal Meena for further examination, in a trial which is pending and now fixed for final arguments.

Learned counsel for the petitioner vehemently argued having taken me to the reasons given by the learned trial Judge that grant of one more chance to the petitioner would subserve the interest of justice as a further and detailed cross-examination of these witnesses by recalling them would be just and fair.

Per contra learned counsel for the CBI has opposed the petition and supported the impugned order.

I have gone through the record and have heard learned counsel for the parties and perused all the reasons given by the learned trial Judge, which I quote as under:

“7. Now coming to the facts of the instant case, the examination-in-chief of PW10 Chhotu Ram was conducted on 10.07.2012 and said witness was also cross-examined by the defence counsel on the same date. It is a matter of record that PW10 Chhotu Ram has been duly cross-examined by learned defence counsel. Applicant-accused has sought to recall PW10 Chhotu Ram for further cross-examination about the state of affairs of FCI FSD Mandi Dabwali during the period from 09.04.2010 to 16.04.2010. However, it has nowhere been pointed in the application or in the arguments as to what material aspect remains to be elicited during further cross-examination of this witness. It is a matter of record that PW-10 Chhotu Ram has deposed in his examination-in-chief regarding his duty on the main gate of FCI Mandi Dabwali and he has been duly cross-examined by learned defence counsel. It was always open to the defence counsel to cross-examine this witness on any relevant aspect but he remained contented with the cross-examination conducted upon this witness on 10.07.2012 and in such circumstances, seeking recall of a witness on the

ground that the witness was not cross-examined on certain points and that too after period of four years, seems to be an afterthought and does not seem to be bonafide one. Likewise, applicant-accused has sought to recall DW-1 J.M. Meena for further examination with regard to contract work in the godown of FCI Mandi Dabwali and also with regard to fix rates of labour for loading/stacking. A perusal of testimony of DW-1 J. M. Meena would make out that examination-in-chief of this witness runs into two full pages. Needless to mention that DW-1 J. M. Meena has been examined after closure of prosecution evidence and the examination of accused under Section 313 Cr.P.C., meaning thereby applicant-accused was very much aware about the prosecution case as well as the defence set up on his behalf and in such circumstances, it could reasonably be expected that DW-1 J.M. Meena has deposed fully about the facts existing at the relevant time, even if testimony of this witness is taken to be true version at this stage without adverting to other evidence on record and without doubting any portion of his statement. It is also a matter of record that DW-1 J. M. Meena was examined on 18.09.2015 and thereafter ten more defence witnesses have been examined on behalf of applicant-accused and list of

defence witnesses as submitted by the accused stands exhausted and thereafter instant application dated 04.10.2016 has been moved on behalf of the applicant-accused, thereby seeking to recall DW-1 J. M. Meena for further examination. The object of provision of Section 311 Cr.P.C. is to further cause of justice and not to hamper the same. If the facts and circumstances of the case discussed here-in-above are taken into consideration, the intention of the accused-applicant in invoking provision of Section 311 Cr.P.C. does not appear to be in consonance with the object of the said provision. Recalling of a witness on the ground that some witness, i.e. PW-10/Chhotu Ram, was not cross-examined on certain points seems to be an afterthought. The mere fact that the witness sought to be recalled could have been better cross-examined cannot be a ground for exercising the power under Section 311 Cr.P.C. Likewise seeking recall of DW-1 J.M. Meena for further examination can also not be held to be bonafide one as no convincing material has been brought to the notice of the court indicating the vital facts which would facilitate just decision of the case. Moreover, if such applications are entertained without there being no plausible reason, then there would be no end in moving such

applications and aspect of fair and expeditious trial would become casualty.”

In my opinion, the reasons recorded by the trial judge above are legal, correct and appropriate and do not need any interference. This Court fully agreed with the reasons given by the trial Judge for not accepting the request after number of years. The only ground raised by learned counsel for the petitioner is that the cross-examination of these witnesses was read after number of years, which cannot be a ground to recall the witnesses.

Thus, agreeing with the reasons recorded by the trial Judge, the impugned order will have to be upheld.

Learned counsel for the petitioner submits that now the defence evidence has been closed and case is fixed for final arguments and the petitioner may wish to examine himself and therefore, liberty be granted in favour of the petitioner to apply to the trial Court accordingly.

In my opinion, though the case has been closed for arguments, in interest of justice, liberty can be reserved in favour of the petitioner to allow him to examine himself if he so desires but then that can not be done in order to protract the trial any more. The trial Judge would, therefore, consider the request according to law if made by the petitioner before him.

Disposed of accordingly.

14th February, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No